

REMARKS

This Application has been carefully reviewed in light of the Official Action issued August 3, 2007. Claims 1, 2, 4, 5, 8, 10, 11, 13-16, and 18-20 are pending in this application with Claims 6, 7, and 9 being withdrawn. Applicant respectfully requests reconsideration and favorable action in this Application.

The drawings stand objected to under 37 C.F.R. §1.83(a) as not showing every feature of the invention specified in the claims. The Examiner has indicated that the drawing changes submitted adding a midsole and moving the location 824 where the first portion 820 and the second portion 826 meet constitute new matter. Applicant respectfully traverses this objection. Applicant has repeatedly shown that the specification clearly discloses that the shoe can have one or more midsoles. (See page 29, lines 11-13, of Applicant's specification). Moreover, the Examiner has taken Official Notice in rejecting the claims under 35 U.S.C. §103(a) that the use of midsoles between an insole and an outsole is well known and conventional but still continues to assert that new matter is being added to the drawings with the insertion of a midsole despite this Official Notice and despite the express disclosure in Applicant's specification. Applicant has also repeatedly shown that Applicant's specification clearly shows that the first portion 820 and the second portion 826 meet at a point 824 substantially halfway with respect to the upper or outsole of the shoe. (See page 29, lines 16-20, of Applicant's specification). Point 824 in the drawing change of October 26, 2005 is exactly at the halfway point of the shoe. The changes made to the drawings, as specifically requested by the Examiner, literally track the exact language of Applicant's specification without deviation therefrom. As

a result, the drawing changes are consistent with Applicant's specification and do not add any new matter. Thus, there is no basis for the Examiner's position of new matter. Therefore, Applicant respectfully submits that the amended drawings are in accordance with 37 C.F.R. §1.83(a).

Claims 1, 5, and 11, stand rejected under 35 U.S.C. §102(b) as being anticipated by Snabb, et al. Independent Claims 1 and 11 recite in general an insole being configured with a constantly thick forward toe section and a decreasingly thick rear heel section with the constantly thick forward section meeting the decreasingly thick rear heel section at a point substantially halfway point with respect to the upper or outsole of the shoe. By contrast, the Snabb, et al. patent clearly states that its forward toe section does not have a constant thickness until location 29. Location 29 is not at a halfway point with respect to the shoe upper or outsole as required by the claimed invention. In fact, location 29 is underneath the toes of the wearer's foot. The toes of a wearer's foot would never be considered to be at a halfway point of an upper or outsole of a shoe. Moreover, the Snabb, et al. patent clearly teaches away from having this feature at a halfway point of the shoe. (See col. 3, lines 48-50, of the Snabb, et al. patent). In addition, the negative slope of the shoe of the Snabb, et al. patent is clearly caused by the outer sole 20 and not the inner sole 24 as shown in FIGURE 2. The Snabb, et al. patent specifically states that its inner sole 24 is substantially flat both laterally and longitudinally. (See FIGURE 5 and col. 3, lines 50-53, of the Snabb, et al. patent). As a result, the inner sole 24 of the Snabb, et al. patent is not capable of providing the structure required by the claimed invention. Thus, the Snabb, et al.

patent fails to teach each and every limitation of the claimed invention as required to support an anticipation rejection.

The Examiner continues to argue that the Snabb, et al. patent has an insole with a constant thickness to point 28 under the ball of a wearer's foot. This position is not supported by the disclosure or drawings of the Snabb, et al. patent. First, the various thicknesses of the shoe of the Snabb, et al. patent is based on its outer sole 20 as its inner sole 24 is explicitly described as being both laterally and longitudinally flat. Thus, the express flatness of the inner sole 24 of the Snabb, et al. patent means it cannot have a rear heel section with a decreasing slope as required by the claimed invention. As a result, the claimed invention describes an insole that is not substantially flat both laterally and longitudinally in contrast to the inner sole 24 of the Snabb, et al. patent. Second, the Snabb, et al. patent clearly states that the slope is decreased to 0 degrees under the toes at point 29, forward and beyond the ball centers of pressure at point 28. (See col. 4, lines 37-40, of the Snabb, et al. patent). As a result, there is no constant thickness at a point substantially halfway with respect to an upper or outsole of a shoe as required by the claimed invention. For arguments sake, even if it is assumed that the slope is 0 degrees at point 28, this would still never be considered to be at a halfway point of an upper or outsole of a shoe. Therefore, Applicant respectfully submits that Claims 1, 5, and 11 are not anticipated by the Snabb, et al. patent.

Claims 8, 14, 16, 19, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Snabb, et al. Independent Claim 1, from which Claim 8 depends, and Independent Claim 11, from which Claim 14 depends has been shown above to be patentably distinct from the Snabb, et al.

patent. Independent Claim 16 includes the similar features shown above to be patentably distinct from the Snabb, et al. patent. Despite the Examiner's Official Notice that it is well known to have a midsole between an insole and an outsole, the Snabb, et al. patent fails to mention the term midsole let alone whether such an element can be incorporated within the specific structure of its shoe while maintaining its required functional features. Therefore, Applicant respectfully submits that Claims 8, 14, 16, 19, and 20 are patentably distinct from the Snabb, et al. patent.

Claims 15 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Snabb, et al. in view of Borgeas. Independent Claim 11, from which Claim 15 depends, has been shown above to be patentably distinct from the Snabb, et al. patent. Moreover, the Borgeas patent does not include any additional disclosure combinable with the Snabb, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claim 15 is patentably distinct from the proposed Snabb, et al. - Borgeas combination.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.


If there are matters that can be discussed by telephone to advance prosecution of this Application, Applicant invites the Examiner to contact the undersigned attorney at the number provided below.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

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A handwritten signature in black ink, appearing to read "Charles S. Fish", is written over a horizontal line.

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November 5, 2007

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